In the High Court of Uttaranchal at Nainital.
Criminal Revision No. 808/2001
(Old No.1268 of 1989)

Gokula Nand S/o Brij Mohan Sharma

R/o Garhi Hayatpur P.S. Baldeo

R.P.F. Pilibhit District Pilibhit …Revisionist.

Vs.

State of U.P. ….Respondent.

**Sri Anurag Bisaria learned counsel for the revisionist.**

**Sri L.M. Verma, learned A.G.A. for the respondent.**

**Date of Judgment: 2-4-22004**

ORAL JUDGMENT (Per: **Hon'ble Irshad Hussain, J.**)

This criminal revision has been filed against the judgment and order dated 15-5-1989 passed by IInd Additional Sessions Judge, Nainital in criminal appeal No. 21 of 1989 confirming the judgment and order dated 8.2.1989 passed by the then C.J.M. Nainital in criminal case no. 400/1988 whereby the revisionist was convicted under sections 323/504 I.P.C. and section 120 of the Railway Act and instead of passing a sentence against him forthwith he was released on probation and was asked to furnish a personal bond for Rs. 1000/- for keeping peace and good behaviour for a period of one year.

2- Prosecution case briefly stated was that on 28-7-1987 Sri D.S.Mishra (P.W.2) a railway shunter was staying in the first class waiting wook of Lalkuan Railway Station with his wife Smt. Sarswati Devi (P.W.4). At about 11.30 p.m. revisionist Gokula Nand R.P.F. constable accompanied by his Officer Commandant D. Ramchandran checked by waiting room. The Commandant inquired from the complainant D.S.Mishra as to how he was staying in the first class waiting room and at the same time the revisionist carrying club gave its blow on the eye brow of said Sri D.S. Mishra who sustained injuries. He and his wife were also subjected to abuse and criminally intimidated. The matter was reported to the G.R.P. Police Post Lalkuan vide written report, Ex.Ka.2 by the said victim and after investigation charge sheet

was submitted against the revisionist. The revisionist was therefore put to trial who was convicted for committing the offences under sections 323/504 I.P.C. and section 120 of the Railway Act. Instead of passing a sentence against him forthwith he was released on probation with the conditions laid down in the judgment and order dated 8.2.1989 passed by the then C.J.M.,Nainital. On appeal being preferred the same was dismissed as stated above. It was also then pointed out that the revisionist had furnished the required bond.

3- The learned counsel for the revisionist submitted that the learned C.J.M. as well as the appellate court failed to properly appraise the evidence in the case particularly when the complainant Daya Shankar Mishra did not know the revisionist by name and no test identification was conducted to fix the identify of the assailant. Learned counsel also submitted that the evidence of the prosecution was also not sufficient to prove the allegation against the revisionist. Having gone through the record with the help of the learned counsel for the revisionist and the learned A.G.A. I see no merit in this revision and the same is liable to be dismissed.

4- The reasons are that the allegation of the prosecution stand substantiated by the definite and cogent evidence of the victim Daya Shankar Mishra (P.W.2) and his wife Smt. Sarswati Devi (P.W.4). When the incident took place there was commotion and Station master Sri K.K.Gautam (P.W.3) arrived at the waiting room from where the victim as well as the revisionist came out accompanied by the Commandant and then the complainant also told the Station Master that he had been assaulted by the revisinist constable Gokula Nand. The complainant-victim and his wife have also identified him in the dock when their evidence was recorded and therefore the identity of the assailant was established beyond doubt.

5- Further, the Medical Officer Dr.P.C. Kapri (P.W.1) proved the injury report, Ex.Ka.1 and also proved the injuries found on the person of the said complainant-victim D.S.Mishra. According to medical evidence the injures were fresh and were probably caused on the day of occurrence at about 11.30 p.m. There was thus cogent evidence to prove

the allegations against the revisionist and not only the C.J.M. Nainital but also the appellate court have properly appraised the evidence adduced in the case.

6- As stated above the revision is devoid of merit and is liable to be dismissed. The revision is dismissed.

**(Irshad Hussain, J.)**